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101ST CONGRESS  
2D SESSION

# S. 2326

To amend title 35, United States Code, with respect to patents on certain processes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, JANUARY 23), 1990

Mr. DECONCINI (for himself, Mr. HOLLINGS, Mr. LAUTENBERG, Mr. CRANSTON, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, with respect to patents on certain processes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PATENTABILITY OF CERTAIN PROCESSES.**

4 Section 103 of title 35, United States Code, is amended  
5 by adding at the end the following new paragraph:

6 "A process of making a product shall not be considered  
7 obvious under this section if an essential material used in the  
8 process is novel under section 102 and otherwise nonobvious  
9 under section 103."

1 SEC. 2. IMPORTATION PROHIBITION; INFRINGEMENT BY IM-  
2 PORTATION, SALE, OR USE.

3 (a) AMENDMENT TO TARIFF ACT OF 1930.—Section  
4 337(a)(1)(B) of the Tariff Act of 1930 (19 U.S.C.  
5 1337(a)(1)(B)) is amended—

6 (1) in clause (i) by striking “or” after the semi-  
7 colon;

8 (2) in clause (ii) by striking out the period at the  
9 end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(iii) are made, produced, or processed  
12 under, or by means of, the use of an essential bio-  
13 technological material (as defined under section  
14 154(b) of title 35, United States Code) covered by  
15 a valid and enforceable United States patent.”.

16 (b) AMENDMENTS TO TITLE 35, UNITED STATES  
17 CODE.—

18 (1) INFRINGEMENT.—Section 271 of title 35,  
19 United States Code, is amended by adding at the end  
20 the following new subsection:

21 “(h) Whoever without authority imports into the United  
22 States or sells or uses within the United States a product  
23 which is made by using an essential biotechnological material  
24 (as defined under section 154(b)) which is patented in the  
25 United States shall be liable as an infringer if the importa-

1 tion, sale, or use of the product occurs during the term of  
2 such patent.”.

3 (2) CONTENTS AND TERM OF PATENT.—Section  
4 154 of title 35, United States Code, is amended—

5 (A) by inserting “(a)” before “Every”;

6 (B) by inserting “(1)” after “in this title,”;

7 (C) by striking “and, if the invention” and  
8 inserting “(2) if the invention”;

9 (D) by inserting after “products made by that  
10 process,” the following: “and (3) if the invention  
11 is an essential biotechnological material used in  
12 making a product, of the right to exclude others  
13 from using or selling throughout the United  
14 States, or importing into the United States, that  
15 product,”; and

16 (E) by adding at the end the following:

17 “(b) For purposes of this section, the term ‘essential bio-  
18 technological material’ means a biologically engineered orga-  
19 nism that is essential for the production of a product. Such  
20 term includes any host cell, DNA sequence, or vector.”.

21 **SEC. 3. EFFECTIVE DATE.**

22 (a) SECTION 1.—The amendment made by section 1  
23 shall apply to all United States patents granted before, on, or  
24 after the date of the enactment of this Act and to all applica-  
25 tions for United States patents pending on or filed after such

1 date of enactment, including any application for the reissuance of a patent.

3 (b) SECTION 2.—(1) The amendment made by section 4 2(a) shall apply only to articles imported, or sold for importation, on or after the date of the enactment of this Act.

6 (2)(A) Subject to subparagraph (B), the amendments 7 made by section 2(b) shall take effect on the date of the enactment of this Act.

9 (B) With respect to any article which is imported before 10 the date of enactment of this Act, and which, but for the 11 amendment made by section 2(b), could be sold or used 12 within the United States, no person shall be liable for infringement under section 271(h) of title 35, United States 13 Code, for such sale or use.

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